

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 214 of 1993

with

CRIMINAL APPEAL No 214 of 1993

with

CRIMINAL APPEAL No 81 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

and

Hon'ble MR.JUSTICE D.P.BUCH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

RATNABHAI BIJIABHAI SANGHADA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 214 of 1993
MR PM VYAS for Petitioners No. 1-2
Mr.KP RAVAL, A.P.P. for Respondent No. 1
2. Criminal Appeal No. 214 of 1993
MR PM VYAS for Petitioners No. 1-2

PUBLIC PROSECUTOR for Respondent No. 1
3. Criminal Appeal No. 81 of 1993
MS BINODA GAJJAR for Petitioner No. 1
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 20/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The Appellants have filed this Appeal through Jail challenging the Judgment and order of conviction and sentence dated 24.12.1992 passed by the learned Additional Sessions Judge, Panch Mahals at Godhra in Sessions Case No.59 of 1991 whereby the Appellant - accused No.1 Ratnabhai Bijaiabhai Sanghada found to be guilty for committing murder of deceased Vijayabhai by causing injury with Arrow and sentenced to suffer Life Imprisonment and to pay fine of Rs.2000/- i/d. to under-go 6 months imprisonment. He has been also found guilty for the offence u/s.326 I.P.Code for causing injury with Arrow on the chest of injured eye witness Bhavsing Kalji. The appellant - accused No.1 is also convicted for the offences u/s. 302, 326, 324 read with Section 114 I.P.Code. The Appellant - accused No.2 Navlabhai Lalabhai Damor is found guilty for the offence u/s. 324 I.P.Code for causing injury with Arrow to complainant Hemjibhai Tetabhei on his wrist. He has also been convicted for the offences u/s. 302, 326 read with Section 114 I.P.Code for committing murder of deceased Vijayabhai and causing injury to Bhavsing Kalji on his chest with Arrow. He has been also imposed sentenced to suffer Life Imprisonment and to pay fine of Rs.500/- i/d to further under-go one month imprisonment.

2. The incident in question took place on 23.11.1990 at about 5.00 p.m. The dispute was regarding the land. Accused No.2 Navlabhai mortgaged the land first to deceased Vijayabhai and then to accused No.1. On the date of incident there was hot discussion between both the accused and deceased Vijayabhai regarding money. It is the prosecution case that the appellant - accused No.1 Ratnabhai Bijaiabhai got excited and killed deceased Vijayabhai by causing injury with Arrow. On hearing shouts from deceased Vijayabhai complainant Hemjibhai

Tetabhai and Bhavsingbhai Kalji both ran to save deceased Vijayabhai. Thereupon the appellant - accused No.1 Ratnabhai Bijiabhai caused injury with arrow on the chest of Bhavsingh Kalji and appellant - accused No.2 Navlabhai caused injury with arrow on the wrist of complainant Hemjibhai Tetabhai and ran away. There was a distance of about 12 k.mtrs. from the place of incident and the Police Station and the complaint was lodged only on the next day i.e. on 24.11.1990 in early morning hours at 5.30 a.m. The Police carried out investigation and arrested both the accused. They were tried for the aforesaid offences by the learned trial Judge and accordingly both of them have been convicted for the aforesaid offences and sentenced to suffer Life Imprisonment. The said order of conviction and sentence is challenged in this Joint Appeal filed by both the accused through Jail.

3. Learned Counsel Shri Vyas, appointed to defend both the appellants - accused, took us through the evidence of all the eye witnesses, viz. (i) complainant Hemjibhai Tetabhai, P.W. 7, Ex.35, (ii) Bhavsingh Kalji, P.W.6, Ex.34 and (iii) Bhathubhai Fuljibhai, P.W. 5, Ex.33. Out of these 3 eye witnesses 2 are injured. Hemji Tetabhai received injury with arrow on his wrist and Bhavsingh received injury with Arrow on his chest. Bhathubhai Fulji was in his house when he heard the shouts of deceased Vijayabhai and therefore he also went to the place of incident and there he saw accused No.1 causing injury with Arrow to deceased Vijayabhai and to injured Bhavsingh on his chest and accused No.2 Navlabhai causing injury with Arrow on the wrist of complainant Hemjibhai Tetabhai.

4. We have carefully gone through the evidence of all the 3 eye witnesses including the injured complainant Hemjibhai Tetabhai. There is a delay of about 12 hours in lodging F.I.R. because of the distance of about 12 k.mtrs. from the place of incident to the Police Station therefore no adverse inference can be drawn against the prosecution about the delay of 12 hours in lodging the F.I.R. They were waiting for the arrival of Bhalji, father of deceased Vijayabhai, who came late in the night at about 9.30 p.m. at the village. Both the accused are known to the prosecution witnesses and there is no previous enmity between them. It is true that the complainant Hemjibhai Tetabhai is a cousin of deceased Vijayabhai, but only on that ground his evidence cannot be discarded. Only thing is that his evidence is required to be considered closely. In his cross examination an attempt is made to show that they had

burnt the house of accused No.2 Navlabhai and they had gone to beat Navlabhai, therefore, by way of self defence the accused killed Vijayabhai and injured Hemjibhai and Bhavsinh. However, this suggestion was clearly denied by both witnesses Hemji Tetabhai as well as Bhavsinh Kalji. Similar suggestion was put to injured witness Bhavsinh Kalji, P.W. 6, Ex.34. He has also clearly denied the suggestion that because they had burnt the house of Navlabhai and they had gone to beat Navlabhai and therefore by way of self defence both the accused killed Vijayabhai and injured Bhavsinh and Hemji Tetabhai with Arrow. However, it is interesting to note that some suggestion was put to another eye witness Bhatubhai Fulji P.W. 5, Ex.33 that on the day of incident house of Navla was burnt. The said suggestion was denied by the witness. Except that suggestion no other suggestion was put that he was also involved in burning the house of Navla and beating him. He is independent witness. He is not related to the deceased nor he is hostile to the accused.

5. Thus, in our considered opinion the prosecution has fully proved its case against the appellant - accused No.1 for causing death of Vijayabhai with Arrow and causing serious injury to witness Bhavsinh Kalji on his chest with Arrow. Under the circumstances, the appellant - accused No.1 was required to be convicted for the offence u/s. 302 as well as 326 of I.P.Code. However, we fail to appreciate that how the appellant - accused No.2 can be convicted for the offence u/s. 302, 326, 324 read with 114 I.P.Code. In the instant case it is clearly stated by all the prosecution witnesses that accused No.2 Navlabhai caused injury with Arrow on the wrist of the complainant Hemjibhai Tetabhai. Accused Navla had never played any role for causing any injury either to deceased Vijayabhai or injured Bhavsinh. The only evidence against him was that he caused injury with Arrow to complainant Hemjibhai then at the most it would be a case against him for the offence u/s.326 I.P.Code, but he cannot be convicted for the offence u/s. 302, 326, 324 r/w Section 114 I.P.Code.

6. In view of above discussion, we have to modify the order of conviction recorded by the learned trial Judge against the appellant - accused No.1 Ratnabhai convicting him for the offence u/s.302, 326, 324 r/w Section 114 I.P.Code. The said order of conviction is hereby altered and the appellant - accused No.1 Ratnabhai Bijiabhai is convicted for the offence u/s.302 I.P.Code for committing murder of deceased Vijayabhai. He is also convicted for the offence u/s.326 I.P.Code for causing

serious injury on the chest of injured Bhavsinh Kalji. He is sentenced to suffer life imprisonment for the offence u/s. 302 I.P.Code and no separate sentence is passed for the offence u/s.326 I.P.Code.

7. As stated earlier the appellant - accused No.2 Navlabhai Lalabhai Damore cannot be convicted for the offence u/s. 302, 326 r/w. Section 114 I.P.Code for causing death of Vijayabhai and causing injury to injured Bhavsinh. Therefore, his order of conviction and sentence passed by the learned trial Judge convicting him for the offence u/s.302, 326 r/w. Section 114 I.P.Code has to be quashed and set aside and accordingly it is quashed and set aside. However, he is found guilty for the offence u/s. 326 I.P.Code for causing injury with Arrow to injured complainant Hemjibhai Tetabhai. He is reported to be in Jail for more than 9 years. Therefore, in our considered opinion, the sentence of 9 years for the offence u/s.326 I.P.Code is more than sufficient. Hence, the order of sentence already undergone by the accused No.2 Navlabhai is passed by setting aside the order of fine. Accordingly, this Appeal, qua appellant accused No.2 Navlabhai Lalabhai Damore, is partly allowed and the order of conviction and sentence passed by the learned trial Judge convicting him for the offence u/s.302, 326, 324 r/w Section 114 I.P.Code is hereby quashed and set aside. The appellant - accused No.2 Navlabhai Lalabhai Damore is found guilty for the offence u/s. 326 I.P.Code and is ordered to sentence which he has already undergone. The order of fine of Rs.500/passed by the learned trial Judge is hereby set aside. Accused No.2 - Navlabhai Lalabhai Damore is ordered to be set at liberty forthwith if he is not required in any other case. Fine if paid, be refunded to the appellant accused No.2 Navlabhai Lalabhai Damore.

sd/-

(B.J.Shethna, J.)

Date : December 20, 2001 Sd/-

(D.P.Buch, J.)

sas